RECOGNIZING LEWISVILLE AND FLOWER MOUND STUDENTS FOR RECEIVING TOP HONORS AT THE INAUGURAL NORTH TEXAS TEEN COURT TRAINING

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 12, 2007

Mr. BURGESS. Madam Speaker, I rise today to recognize student volunteers with the Lewisville-Flower Mound Teen Court, who were named ''Best Overall Prosecution Team'' and ''Best Overall Defense Team'' at the inaugural North Texas Teen Court Training.

The event was held on March 3, 2007, at the Texas Wesleyan University School of Law in Fort Worth, Texas. Volunteer youth attorneys, bailiffs, clerks, and jurors are given an opportunity to conduct trials of actual cases with Class C misdemeanor defendants from local Teen Courts. Over 200 teens, adult volunteers, and judges were involved in the competition.

Seth Duban, of Marcus High School, and John Maksym, a home-schooled student, were members of the winning prosecution team. Lewisville High School students Sarah Abdel and Jennifer Stanley, along with Lexia Chadwick of Huffines Middle School, composed the competition's winning defense team.

The North Texas Teen Court Training is a great event for the students, the community, and the Texas Wesleyan University School of Law. These exceptional young men and women had the opportunity to see and act out the judicial process in a way that they could not have otherwise. I would like to extend my congratulations and best wishes to the five winning students, and to all other participants. I am honored to represent such intelligent and academically driven students.

THE EMPLOYEE FREE CHOICE ACT

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 12, 2007

Mr. RADANOVICH. Madam Speaker, with one of the most misleading names ever put to a piece of legislation, the House of Representatives voted last week on a bill entitled ''The Employee Free Choice Act.'' (H.R. 800). If made law, the Act would result in the most important changes in federal labor law since the enactment of the Wagner Act in 1935 and, contrary to its title, would deprive employees of free choice in the two most important issues involving unions by denying employees the right to a secret ballot election to determine whether or not they want to be represented by a union and by denying employees the right to approve or disapprove the first labor contract with their employer.

Under present law, the most common way to determine whether employees want to be represented by a union is through a secret ballot election conducted by a federal agency, the NLRB. The United States Supreme Court has emphasized that other methods of deciding about unionization are inferior. Under the new bill, a union would be able to gain the right to represent employees through a ''card check'' in which a union simply would have to collect the signatures of a majority of employees on union authorization cards in order to represent them. The result would be that employees' signatures on union cards, which now are used to call for an election, would be used to preclude them from having an election. Moreover, once unionized through a card check, employees would not be able to change their mind by the same mechanism.

Nothing could be more undemocratic, as is evidenced by the AFL–CIO's own study showing that when unions get from 60 to 75 percent of employees to sign union authorization cards, they win less than 50 percent of elections.

It seems painfully obvious that, as Congressman HOWARD BERMAN (one of the Act's co-sponsors), said when he was in the California Assembly, secret ballot elections are essential to ''the self determination of the workers'' that federal labor law seeks to promote. As Yale's Robert Dahl concluded: ''In the late nineteenth century, the secret ballot began to replace a show of hands. . . [S]ecrecy [in voting] has become the general standard, a country in which it is widely violated would be judged as lacking free and fair elections.'' Federal law now requires that in elections for federal office, the citizens must be able to vote ''in a private and independent manner'' and that ''the privacy of the voter and the confidentiality of the ballot'' must be protected. 42 U.S.C. § 15481(a)(1). The lack of privacy under H.R. 800 would subject employees to overwhelming pressure from union organizers and other workers to sign union cards, putting them back in the 19th century.

Card checks not only violate the workers' right to privacy but deprive workers of the right to hear the arguments against as well as for unionization. Again, as Professor Dahl observed, ''voters must have access . . . to alternative sources of information that are not . . . dominated by any . . . groups or point of view.'' Unions usually solicit cards with no notice to the employer, so that H.R. 800 would deprive employees of the ''alternate sources of information'' necessary to make an informed, and hence free, decision.

H.R. 800 compounds these inherent defects in the card check process by providing no remedy if a union uses improper pressure or deception in getting employees to sign cards. Present law establishes a detailed and comprehensive procedure for dealing with election misconduct by both employers and union. H.R. 800 contains no such protections.

H.R. 800's card check provisions also violate the parity of the processes for employees to bring in a union and rejecting an existing union representative. Under present law and under the proposed new law, once employees bring in a union, it is not easy for them to change their mind and get rid of the union. In most cases, a secret ballot election is necessary both to bring in a union and jettison one. Under the proposed law, it would be easy for unions to get in through a card check, but difficult for employees to get free of union representation because the formalities of a secret ballot election would be required. There is no rational basis for establishing different procedures for choosing to be represented by a union and choosing not to.

H.R. 800 would deprive employees of their other basic free choice: the right to use their collective economic power to negotiate the best agreement they think they can get and the right to approve or reject any contract negotiated by their union. Presently, employees are free to strike if they do not approve of a proposed labor contract, but H.R. 800 makes the contract fixed by a panel of government-appointed arbitrators binding for two years and now most employees covered by a proposed labor contract have the right to vote whether or not to accept it. H.R. 800 would strip this right away from them for the first (and most important) contract with their employer. If their employer and union did not reach agreement on a first contract after 90 days, the Federal Mediation and Conciliation Service (''FMCS'') would appoint a board of private arbitrators to determine the terms of the contract, which would be binding on the employees, the union, and the employer. There is no limit on the arbitrators' authority. They could raise wages by 100 percent or lower them. They could require employees to pay union dues or lose their jobs. This part of the law is clearly unconstitutional because it establishes no standards or procedures for the arbitrators to follow and does not provide for any review of the private arbitrators' decisions, either administrative or judicial.

In 1925, the Supreme Court declared unconstitutional under the Fourteenth Amendment a state law requiring certain private sector employers and workers to submit to binding interest arbitration by a panel of judges if the parties could not agree on a contract.

Accordingly, H.R. 800 can be upheld only if it provides procedural due process. It does not. Conspicuously absent from the statute are the procedural safeguards customarily considered necessary to ensure a fair hearing (e.g., the right to notice, to know what standards will be applied, to present evidence, to some kind of review, administrative or judicial). Of course, it is possible that the NLRB will utilize their rulemaking authority to provide for such procedures. Even so, neither agency is authorized to review an arbitration board's decision on the basis of non-compliance with such procedures. Similarly, an arbitration board's non-compliance with procedural safeguards is not a basis for judicial review. Moreover, in most arbitrations, the parties' agreement to a particular procedure is the best guarantee of fairness. Under H.R. 800, the parties have no voice in determining procedure.

In addition to due process infirmities, H.R. 800 effectuates an impermissible delegation of legislative authority to private actors, violating principals of separation of powers. Pursuant to H.R. 800, private arbitrators are vested with the ability to bind nonconsenting parties. Most importantly, employees are not parties to the mediation and have no right to participate in the arbitration proceeding or challenge the arbitrators' decision. While a majority of the affected employees will have signed union authorization cards (as defective as they are) supporting the union, the contract imposed by the arbitrators will bind all bargaining unit employees, including those who did not support union representation.

Aside from constitutional defects, H.R. 800 would eviscerate large portions of the over 70 years of case law developed carefully under the National Labor Relations Act. The resulting uncertainty would be a major force in destabilizing labor relations and causing labor strife the NLRA was intended to resolve. For example, over 97 percent of private sector labor